

Myrtle McDonald  
MYRTLE MCDONALD, PLLC  
3305 66<sup>th</sup> Street, Suite  
Lubbock, Texas 79413  
Tel. (806) 772-0056  
FAX (806) 589-0790  
State Bar No. 13555700  
Attorney for Lubbock Heritage  
Hospital, Inc. dba Doctor's Hospital

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
LUBBOCK DIVISION

IN RE:	§	
	§	
LUBBOCK, TEXAS - HIGHLAND	§	CASE NO. 08-50202-RLJ-11
MEDICAL CENTER, L.L.P.	§	
Debtor	§	

**LUBBOCK HERITAGE HOSPITAL, INC. DBA DOCTOR'S HOSPITAL'S**  
**MOTION TO COMPEL DEBTOR IN POSSESSION TO**  
**TRANSFER FUNDS FROM BANK LOCKBOX ACCOUNTS HOLDING ACCOUNTS**  
**RECEIVABLE FUNDS TO ACCOUNT FOR DISBURSEMENT**

TO SAID HONORABLE COURT:

NOW COMES LUBBOCK HERITAGE HOSPITAL, INC. DBA DOCTOR'S HOSPITAL ("Doctor's Hospital"), and files this its Motion to Compel Debtor in Possession to Transfer Funds from Bank Lockbox Accounts Holding Accounts Receivable Funds to Account for Disbursement to Lubbock Heritage Hospital, Inc. dba Doctor's Hospital. ("Doctor's Hospital") and other owners of such funds. if any, and for such would show the Court as follows:

1. Debtor filed for relief under 11 U.S.C. Chapter 11 on May 31, 2008.
2. On August 15, 2008, Debtor filed a Motion to Sell Assets Free and Clear of all Liens, Claims and Encumbrances with liens to attach to proceeds.

3. A sale was conducted and Order approving the sale was signed by the Court on September 12, 2008. An agreement was entered into between Debtor-in-Possession and Doctor's Hospital providing for use of the Medicare number.

4. Funds paid by Medicare are deposited directly into a lockbox account at Arvest Bank in an account entitled Lubbock, Texas - Highland Medical Center, Account No. 36338102, then transferred by the Debtor into the Debtor-in-Possession Account at Lubbock National Bank and will be until the change of ownership documents are approved by the Medicare/Medicaid agency. Since the sale the Debtor-in-possession has continued to receive payment of accounts receivable, which are deposited into bank lockbox accounts of Debtor-in-possession. Payments from Medicare and Medicaid continue to be paid into the Arvest Bank lockbox account and will be until Medicare and Medicaid issue a new owner number to Doctor's Hospital. Miscellaneous insurance companies deposit funds into Bank of America lockbox account in Debtor's name with Account No. 4781572879, which funds should be transferred into the Lubbock National Bank Debtor-in-Possession Account. NS Fund 1, LLC claims a lien on accounts receivable generated through September 15, 2008 and purchased the remaining accounts receivable of the Debtor. All accounts receivable generated after September 15, 2008, the date of sale, are property of Doctor' Hospital.

5. The Court has previously entered an Order for disbursement of the funds that were held by the Debtor-in-possession. As of April 24, 2009, records of Debtor-in-possession reflect 18 payments to Doctor's Hospital from the proceeds of accounts receivable. Payments have also been made to NS Fund 1, LLC and Internal Revenue Service pursuant to the Order of the Court

dated January 30, 2009.

6. Since the last disbursement to Doctor's Hospital, funds continue to be deposited into the Arvest Bank lockbox account from Medicare and Medicaid, which funds are for services rendered by Doctor's Hospital after September 15, 2009. Records of Debtor-in-possession reflect that as of April 30, 2009, the Arvest Bank lockbox account held \$205,421.48 of Doctor's Hospital's funds representing payments from Medicare and Medicaid of accounts receivable. As of May 14, 2009, the Arvest Bank account balance rose to \$575,676.23. No transfers from the lockbox accounts have been made since April 30, 2009.

7. The banks require orders from the Debtor through the General Partner of the Debtor, Highland West Texas Medical Services, Inc., by its Senior Vice President, Hershel Breig, to transfer funds from the lockbox accounts. Debtor, through its General Partner, Highland West Texas Medical Services, Inc., has refused and continues to refuse to transfer such funds from lockbox accounts in Arvest Bank and Bank of America to the Debtor in Possession account at Lubbock National Bank in order that disbursements can be made to Doctor's Hospital and NS Fund I LLC as set forth in the Agreed Order Authorizing Disbursements to Doctor's Hospital. NS Fund I, LLC and United States (IRS) dated January 30, 2009. As of May 13, 2009, Bank of America held \$13,879.16 in its lockbox account. Miscellaneous insurance companies deposit payments into the Bank of America account. Accounts receivable collected by Doctor's Hospital and collection agencies are deposited directly into the Lubbock National Bank Account.

8. Only accounts receivable of Debtor prior to September 15, 2008, and Medicare and Medicaid and miscellaneous insurance payments to Doctor's Hospital after September 15, 2008,

are presently placed in these lockbox accounts and Debtor has no claim other than to satisfy the claim of NS Fund 1, LLC. NS Fund1, LLC purchased the remaining accounts receivable of the Debtor under an order of sale.

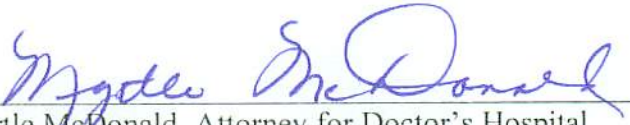
9. A majority of the funds held by the Debtor-in-possession in the above accounts is that of Doctor's Hospital generated after September 15, 2008.

10. Doctor's Hospital files this motion to compel Debtor and/or representatives of Highland West Texas Medical Services, Inc.. General Partner of the Debtor, Lubbock, Texas - Highland Medical Center, L.P., Herschel Breig to transfer funds from the above Arvest Bank lockbox account and the Bank of America lockbox account to the Debtor in Possession Account at Lubbock National Bank and to continue to transfer such funds until a Medicare/Medicare owner's number is issued to Doctor's Hospital..

WHEREFORE, Doctor's Hospital requests an order of the Court directing Debtor-in-possession, acting through its representatives and/or representative of Highland West Texas Medical Services, Inc., General Partner of the Debtor, Herschel Breig, to transfer the funds located in Debtor -in-Possession accounts receivable lockbox accounts in Arvest Bank and Bank of America to Lubbock National Bank for disbursement pursuant to order of the Court.

Respectfully submitted,

MYRTLE MCDONALD, PLLC

By   
Myrtle McDonald, Attorney for Doctor's Hospital  
State Bar No. 13555700  
3305 66<sup>th</sup> Street, Suite 2  
Lubbock, Texas 79413  
Tel 806 792-0056  
Fax 806 589-0790

**CERTIFICATE OF CONFERENCE**

I do hereby certify that I have conferred with Max Tarbox, attorney for Debtor, May 14, 2009, and he has no objection to the motion.

  
Myrtle McDonald

**CERTIFICATE OF SERVICE**

I, MYRTLE MCDONALD, do hereby certify that a true and correct copy of the foregoing instrument has this the \_\_\_\_ day of May, 2009, been served upon the following people by court enabled electronic notice or regular mail:

United States Trustee's Office - **ECF**

Max Tarbox - **ECF**

Nolan Greek - **ECF**

**Herschel Breig  
665 N. Greer Avenue  
Nixa, MO 66714**

All parties in interest registered with the U.S. Bankruptcy Court to receive electronic notices in this case

  
Myrtle McDonald